United States Department of Labor Employees' Compensation Appeals Board

L.S., Appellant))
and) Docket No. 15-0779 Legged: August 7, 2015
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, Employer) Issued: August 7, 2015))
Appearances: Thomas R. Harkins, Esq., for the appellant Office of Solicitor, for the Director	Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge COLLEEN DUFFY KIKO, Judge JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 19, 2015 appellant, through counsel, filed a timely appeal from a December 3, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish an occupational disease in the performance of duty.

FACTUAL HISTORY

On November 18, 2013 appellant worked as a 54-year-old city letter carrier. She filed an occupational disease claim alleging that she injured her knees in the performance of duty. Appellant advised that walking up and down stairs caused pain and swelling in both knees. She

¹ 5 U.S.C. § 8101 et seq.

became aware of her condition and its relation to her federal employment on July 8, 2013. Appellant stopped work on July 8, 2013 and returned on October 1, 2013.

By letter dated December 16, 2013, OWCP notified appellant that evidence was insufficient to establish the claim. Appellant was instructed to complete a questionnaire establishing the factual element of her claim and advised of the type of medical evidence needed.

In a December 30, 2013 medical note, Dr. Dante Trovato, a Board-certified orthopedic surgeon, advised that appellant was under his care for chondromalacia patella of both knees. He reported that she was undergoing physical therapy, but still had bilateral knee problems.

In a December 30, 2013 statement, appellant advised that she had worked for the employing establishment for the past seven years. She noted that on June 15, 2013 she was reassigned to Queens, NY where, two weeks into her position, she began experiencing pain in both knees for which she sought treatment for during her third week. Appellant further noted that she stopped work at that time and returned on October 1, 2013. She stated that three days after returning to work her knees were swollen and painful. Appellant attributed her condition to climbing and descending stairs. She claimed that she did not engage in any sports or recreational activities outside of her federal employment and that she did not have any previous knee condition. Appellant requested reassignment back to the city.

By decision dated February 27, 2014, OWCP denied the claim because medical evidence was insufficient to establish that a medical condition was diagnosed in relation to appellant's work duties.

By letter dated September 10, 2014, appellant's counsel, requested reconsideration. He asserted that he was submitting a new medical report that was sufficient to discharge appellant's burden of proof.

In a July 7, 2014 report, Dr. Trovato advised that he began treating appellant on July 17, 2013 for bilateral knee pain. He noted that she was experiencing pain and swelling in both knees upon ambulation exacerbated by walking up and down steps, kneeling, carrying heavy objects, and squatting. Dr. Trovato further noted seeing appellant on August 28, 2013 after a magnetic resonance imaging (MRI) scan report revealed patella femoral osteoarthritis with fraying of patella cartilage along the medial patella facet with a small adjacent flap tear. He diagnosed patella femoral syndrome and chondromalacia of both knees. Dr. Trovato opined that appellant's condition was permanent and noted that she would have periods of intermittent pain and swelling exacerbated by prolonged walking, standing, carrying excessive weight, kneeling, and squatting. He asserted that her condition was causally related to her duties as a letter carrier.

In a November 27, 2013 report, Dr. Trovato diagnosed left knee osteoarthritis as demonstrated by an x-ray, provided a series of injections, and found that appellant's pain had moderately improved. A partially legible August 26, 2013 left knee MRI scan report was also submitted.

By decision dated December 3, 2014, OWCP again denied appellant's occupational disease claim finding that the medical evidence did not establish that the medical condition was causally related to factors of her employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation, that an injury was sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁴

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.

ANALYSIS

Appellant claimed that she began experiencing knee pain as a result of climbing up and down stairs. There is no dispute that she climbed stairs as a part of her job. However, the medical evidence is insufficient to establish that any medical condition was causally related to the accepted work conditions.

In his July 7, 2014 report, Dr. Trovato diagnosed patella femoral syndrome and chondromalacia of both knees. He opined that appellant's condition was permanent was exacerbated by prolonged walking, standing, carrying excessive weight, kneeling, and squatting.

² Elaine Pendleton, 40 ECAB 1143 (1989).

³ Victor J. Woodhams, 41 ECAB 345 (1989).

⁴ R.H., 59 ECAB 382 (2008); Ernest St. Pierre, 51 ECAB 623 (2000).

⁵ *I.J.*, 59 ECAB 408 (2008); *supra* note 3.

⁶ James Mack, 43 ECAB 321 (1991).

Dr. Trovato opined that her condition was causally related to her duties as a letter carrier. However, he did not provide any medical rationale to explain how these duties contributed to appellant's condition. As noted, rationalized medical opinion evidence is generally required to establish causal relationship. Dr. Trovato's report is insufficient to discharge appellant's burden of proof. Other reports from Dr. Trovato, including his November 27 and December 30, 2013 reports, do not address causal relationship.

There is no other medical evidence of record addressing how appellant's work factors caused or contributed to a diagnosed medical condition.

On appeal appellant's counsel asserts that appellant submitted evidence that was sufficient to establish the claim. As explained, the medical evidence is insufficient to establish that the work duties caused or contributed to appellant's claimed condition.

Appellant may submit new evidence or argument as part of a formal written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant failed to establish an occupational disease caused by work-related events.

⁷ See Jaja K. Asaramo, 55 ECAB 200 (2004) (medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

ORDER

IT IS HEREBY ORDERED THAT the December 3, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 2015 Washington, DC

> Patricia H. Fitzgerald, Deputy Chief Judge Employees' Compensation Appeals Board

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

> James A. Haynes, Alternate Judge Employees' Compensation Appeals Board